

11/25/08

3A

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA
FOR MEETING HELD ON TUESDAY EVENING, OCTOBER 28, 2008

The City Council met at 5:00 pm, on the above-mentioned date, for a Closed Session in the Council Conference Room for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8 regarding Property: APN 104-43-051, APN 104-43-052, APN 104-43-030, APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and for a Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers), Unit #4 - City of Santa Clara Professional Engineers, Units #5, 7 & 8 - City of Santa Clara Employees Association, Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees), Unit #9 - Miscellaneous Unclassified Management Employees and Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association) and for a Conference with Legal Counsel pursuant to Government Code Section 54956.9(b); Anticipated Litigation - City as potential defendant in one case (number of distinct cases or potential cases to be discussed) and for a Conference with Legal Counsel pursuant to Government Code Section 54956.9(a); Existing Litigation - David Rodriguez v. City of Santa Clara Civil Service Commission Board of Review, et al., California Court of Appeal, Sixth Appellate District Case No. H030557 (Santa Clara County Superior Court Case No. CV013374).

The Council then met at 7:17 pm for a regular meeting in the City Hall Council Chambers. The meeting was opened with the recitation of the Pledge of Allegiance and the reading of an Invocation-Prayer.

Present: Council Members Dominic J. Caserta, Will Kennedy, Patrick Kolstad, Joe Kornder, Jamie McLeod and Kevin Moore and Mayor Patricia M. Mahan.

Staff present: City Manager, Deputy City Manager, Director of Planning and Inspection, Acting Director of Public Works - Tom Supan, City Attorney and City Clerk/Auditor.

- 3.A MOTION was made by Caserta, seconded and unanimously carried, that the Minutes for the meeting held on September 30, 2008 be adopted as written.
- 5.A As a Special Order of Business, the Council proceeded with the presentation by the Silicon Valley Leadership Group regarding the 2008 Silicon Valley Turkey Trot 5K Run/Walk and 10K Run to be held on Thanksgiving Day, November 27, 2008, at the Guadalupe River Park/Confluence Meadow in San Jose. Brian Brennan, Director of Member Services, informed the Council and audience that the proceeds from the event benefit Second Harvest Food Bank, the Housing Trust and the Santa Clara County Family Health Foundation. He distributed information on the event. The Council noted the Senior Staff Aide's memo (10/16/08) regarding the event.
- 5.B Also as a Special Order of Business, the Council proceeded to consider the City Clerk/Auditor's memo (10/23/08) regarding the appointment to fill terms ending June 30, 2012. The Mayor informed the audience that the Council interviewed earlier in the evening, in a meeting open to the public, the following applicants: Rain Eterno, Michelle Guzman and Jackie C. Moore. MOTION was made by Moore, seconded and unanimously carried, that the Council appoint Michelle Guzman and Rain Eterno to the Cultural Advisory Commission for terms ending June 30, 2012.
- 5.C Also as a Special Order of Business, the Council proceeded to consider the City Clerk/Auditor's memo (10/23/08) regarding the appointment to fill a vacancy on the Historical and Landmarks Commission for the partial term ending June 30, 2011. The Mayor informed the audience that the Council interviewed earlier in the evening, in a meeting open to the public, the following applicants: Donald Arnoldy, Mia Fitch, Harvey D. Gross and Grant Takamoto. MOTION was made by Caserta, seconded and unanimously carried, that the Council appoint Mia Fitch to the Historical and Landmarks Commission for the partial term ending June 30, 2011.

6.B The Council proceeded to consider the informational memo (10/23/08) submitted by the Director of Streets and Automotive Services entitled "Plastic and Other Single-Use Carryout Bags Restrictions Update". The City Manager reviewed the memo and a letter (10/27/08) submitted by the Neighborhood Market Association, California Restaurant Association, People's Advocate, Inc., California Independent Grocers Association, 7-Eleven Convenience Stores and Progressive Bag Affiliates of the American Chemistry opposing local ordinances that would ban the use of plastic grocery bags or impose fees and taxes on paper bags. Council Member McLeod made comments clarifying the actions at the last Recycling and Waste Reduction Commission meeting. **MOTION** was made by Caserta, seconded and unanimously carried, that the Council **accept** the informational memo and letter.

6.C The Council proceeded to consider the Director of Planning and Inspection's memo (10/09/08) regarding the proposed Roller Coaster at California's Great America and the staff recommendation that the Council find that there is not a significant noise intrusion within or adverse aesthetic impacts upon the nearby office buildings as a result of the proposed roller coaster project and therefore deny the appeal and adopt a resolution of findings that determines that the project is exempt from California Environmental Quality Act (CEQA) and approves the height variance for a 111-foot high roller coaster, subject to conditions of approval. The City Manager reviewed the memo, which outlined past Council actions and reviewed the possible actions for this evening's meeting. A Council discussion followed and the City Manager and City Attorney answered Council questions. Timothy A. Tosta, of Luce, Forward, Hamilton & Scripps, LLP., addressed the Council on behalf of the project appellant, Prudential Investment Management, Inc. Steve Hazel addressed the Council and expressed concern regarding the process. Bill Lentz, Vice-President and General Manager of California's Great America addressed the Council regarding the project. **MOTION** was made by Kennedy, seconded and unanimously carried, that the Council **refer** the matter to the Architectural Review Committee for a meeting as soon as possible with the principals of both parties to be in attendance and to **defer** the appeal to the November 18, 2008 Council meeting.

7.A (7A.6) In consideration of the Consent Calendar, the City Manager asked that the Council **continue**, to a date uncertain, the Director of Streets and Automotive Services memo (10/17/08) regarding the adoption of a Resolution of Intention on consideration of granting an Exclusive Franchise Agreement for collection, transportation and disposal of refuse.

- 7A.1 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Public Works/City Engineer (10/22/08), the Council **adopt Resolution No. 08-7571** entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING CERTAIN PARKING RESTRICTIONS ON LAWRENCE STATION ROAD" which establishes a No Parking zone for vehicles in excess of 20 feet in length and with three or more axles on the east side of Lawrence Station Road, south of Warburton Avenue.
- 7A.2 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Planning and Inspection (10/09/08), the Council **set the salary of newly-hired Assistant Planner II Rachael Grossman** at Step 2 of the salary schedule.
- 7A.3 MOTION was made by Caserta, seconded and unanimously carried, that, per the Chief of Police (10/21/08), the Council **set the salary of newly-hired Police Officer Colin Stewart** at Step 2, Salary Plan B, Grade 31.
- 7A.4 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Electric Utility (10/22/08), the Council **approve the use of City Electric forces** for the installation of facilities at 4051 Burton Drive.
- 7A.5 MOTION was made by Caserta, seconded and unanimously carried, that, per the Senior Staff Aide (10/16/08), the Council **approve and authorize publication of the proposed December 2008 Mission City SCENES**.
- 7A.7 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Streets and Automotive Services (10/14/08), the Council **adopt Resolution No. 08-7572** entitled "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, GIVING NOTICE OF THE INTENTION OF THE CITY OF SANTA CLARA TO GRANT OR RENEW EIGHT NON-EXCLUSIVE FRANCHISES FOR THE HAULING OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIAL IN THE CITY OF SANTA CLARA PURSUANT TO THE PROVISIONS OF CHAPTER 8.25 ("ACCUMULATION, TRANSPORTATION AND DISPOSAL OF WASTE MATTER") OF 'THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA'", **set** December 2, 2008 as the public hearing date and **direct** the City Manager to publish the Notice of Public Hearing on the hauling franchise(s) within 15 days of the date of passage of the Resolution.

- 7B.1 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Electric Utility (10/08/08), the Council **approve** and authorize the City Manager to execute Amendment No. 2 to the Service Agreement with Compliance Services, Inc. to increase the contract amount by \$100,0000 to a total not to exceed amount of \$415,000 to oversee five digs on Department of Transportation Gas Pipeline located at the Donald Von Raesfeld (DVR) Power Plant.
- 7B.2 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Electric Utility (10/09/08), the Council **approve** and authorize the City Manager to execute the Agreement for Services with GEA Power Cooling, Inc. in an amount not to exceed \$200,000 for Cooling Tower Drift Eliminator Replacement at the Donald Von Raesfeld (DVR) Power Plant.
- 7B.3 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Electric Utility (10/17/08), the Council **approve** and authorize the City Manager to execute Call No. 08-5 with Milton Security Group, LLC in an amount not to exceed \$141,440 for a Project Manager to assist the System Support Division of the Electric Department.
- 7B.4 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Public Works/City Engineer (10/22/08), the Council **approve** and authorize the City Manager to execute Amendment No. 1 to the Agreement with H.T. Harvey & Associates to increase the contract amount by \$10,000 to a total not to exceed amount of \$59,740 for the Wetland Mitigation at Ulistac Natural Area project and **authorize** the City Manager to make minor non-substantive modifications, if necessary.
- 7B.5 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Public Works/City Engineer (10/22/08), the Council **approve** and authorize the City Manager to execute Amendment No. 1 to the Agreement with APC International, Inc. to increase the contract amount by \$43,000 to a total not to exceed amount of \$92,420 for Construction Inspection/Management Services for the San Tomas Aquino/Saratoga Creek Trail, Reach 3 and **authorize** the City Manager to make minor non-substantive modifications, if necessary.

- 7B.6 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Streets and Automotive Services (10/16/08), the Council **approve** and authorize the City Manager to execute an Agreement with Clean Harbors Environmental Services in an amount not to exceed \$90,000 in Year 1 or \$270,000 over the three-year term, to provide Household Hazardous Waste (HHW) Collection and disposal services.
- 7B.7 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Streets and Automotive Services (10/10/08), the Council **approve** and authorize the City Manager to execute Call No. 08-2 with Adhara Systems, Inc. in an amount not to exceed \$4,500 to prepare a Budget Option Report for the pavement management system.
- 7B.8 MOTION was made by Caserta, seconded and unanimously carried, that, per the Housing and Community Services Division Manager (10/06/08), the Council **approve** and authorize the City Manager to execute the Fourth Amendment to the Affordable Housing Loan Agreement with Community Home Partners, LLC for the Pacific Gardens Senior Housing project.
- 7C.1,2,3,4,5 MOTION was made by Caserta, seconded and unanimously carried, that the Council **note and file** the following Informational Memos: Solid Waste Association of North America Gold Rush Chapter - Outstanding Public Agency Award and Municipal Member of the Year for 2007-08 (Director of Streets and Automotive Services - 10/17/08); Home Builders Association of Northern California Recognizes Stephanie Gutowski, Staff Analyst for Support to the Home Building Industry (Housing and Community Services Division Manager - 10/17/08); Status of General Plan Update and Steering Committee Meetings (Director of Planning and Inspection - 10/21/08); Final Word Forum 2008 - November 3, 2008 at 7:00 pm in the City Hall Council Chambers (Deputy City Manager - 10/21/08); and Announcement of the Completion of the Council Chambers Camera Systems Replacement Project (Public Communications Manager - 10/22/08).
- 7D.1 MOTION was made by Caserta, seconded and unanimously carried, that the Council **note and file** the Minutes of the Senior Advisory Commission for the meeting of September 22, 2008.

- 8.A PUBLIC HEARING: The Mayor declared the hearing open for consideration of an Agreement and Covenant Running with the Land with Bernadette M. Delgado to construct and maintain a 3 foot 9 inch high iron fence and gate encroaching into the public right-of-way at 1373 Jefferson Street (APN 269-03-049;S.C. 18,315). Acting Director of Public Works, Tom Supan, reviewed the Director of Public Works/City Engineer's memo (10/22/08). There being no public input, MOTION was made by Caserta, seconded and unanimously carried, that the hearing be closed. MOTION was then made by Caserta seconded and unanimously carried, that the Council approve and authorize the City Manager to execute an Agreement and Covenant Running with the Land with Bernadette M. Delgado to construct and maintain a 3 foot 9 inch high iron fence and gate encroaching into the public right-of-way at 1375 Jefferson Street and authorize the recordation of the Agreement.
- 9.A MOTION was made by Kennedy, seconded and unanimously carried, that, per the Director of Public Works/City Engineer (10/22/08), the Council accept the bid in the amount of \$474,855 for the San Tomas Aquino/Saratoga Creek Trail - Monroe Street At-Grade Crossing (CE 07-08-01, and award the contract to the lowest responsive and responsible bidder, Tennyson Electric, Inc. and authorize the City Manager to execute contract documents and change orders in connection with the Project which, in the aggregate, do not exceed \$47,485 or 10% of the contract amount.
- 10.A,10.A.1 MOTION was made by Caserta, seconded and unanimously carried, that, per the Director of Planning and Inspection (10/16/08), the Council set November 18, 2008 for a public hearing to consider the Planning Commission's recommendation of October 8, 2008 in approving a time extension of a Planned Development (PD) zoning to allow construction of 45 dwelling units as part of a four-story residential development condominium project with podium parking at 2250 El Camino Real (APN 290-10-072) PLN2008-07285 - Gregory Malley). The Minutes of the Planning Commission for the meeting of October 8, 2008 were duly noted and filed.

10.B MOTION was made by Kolstad, seconded and unanimously carried, that, per the recommendations contained in the Minutes of the International Exchange Commission for the meeting of October 7, 2008, the Council authorize the City to extend an official invitation to Ireland's President Mary McAleese who will tour the Bay Area in December 2008.

MOTION was then made by Caserta, seconded and unanimously carried, that the Council refer to the City Manager the recommendation contained in the above-referenced Minutes of the International Exchange Commission for the meeting of October 7, 2008 to support Wilcox High School's upcoming request for support from the Champion Team Fund for the band's trip to Limerick, Ireland in March 2009 and note and file the Minutes.

12.A Under Public Presentations, Steve Hazel addressed the Council with concerns regarding Morse Mansion and the proposed San Francisco 49ers stadium.

Also under Public Presentations, Van Langston addressed the Council with concerns regarding the environmental impact review process for the Kiely Boulevard project.

13.A MOTION was made by Caserta, seconded and unanimously carried, that the Council approve the payment of Bills and Claims and Progress Payments as submitted.

14.B Council Member Moore announced the Clara Vista/San Miguel home area Halloween celebration.

15.A The City Manager announced that the City received the Outstanding Public Agency Award for 2007-2008 from the Solid Waste Association of Northern America and Dave Staub, Division Manager - Street Department, was recognized as the Municipal Member of the Year. She also announced that Stephanie Gutowski, Staff Analyst - Housing and Community Services, was recognized by the Home Builders Association of Northern California for support to the Home Building Industry. She also announced the Final Word Forum to be held in the Council Chambers on November 3, 2008 from 7:00 pm to 9:30 pm and that it will be broadcast on municipal Cable Channel 15 and streamed live on the City's website.

16.A The City Attorney stated that the Council held earlier in the evening at 5:00 pm a **Closed Session** in the Council Conference Room for 1) Conference with Real Property Negotiator pursuant to Government Code Section 54956.8 regarding Property: APN 104-43-051, APN 104-43-052, APN 104-43-030, APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; 2) Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers), Unit #4 - City of Santa Clara Professional Engineers, Units #5, 7 & 8 - City of Santa Clara Employees Association, Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees), Unit #9 - Miscellaneous Unclassified Management Employees and Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association) and that there was no reportable action; 3) Conference with Legal Counsel (Anticipated Litigation) pursuant to Government Code Section 54956.9(a) City as potential defendant in one case (number of distinct cases or potential cases to be discussed) and that there was no reportable action; and 4) Conference with Legal Counsel (Anticipated Litigation) pursuant to Government Code Section 54956.9(b) *David Rodriguez v. City of Santa Clara Civil Service Commission Board of Review, et al.*, California Court of Appeal, Sixth Appellate District Case No. H030557 (Santa Clara County Superior Court Case No. CV013374) and that there was no reportable action.

16.A **MOTION** was made by Caserta, seconded and unanimously carried, that, per the City Attorney (10/24/08), the Council **set November 6, 2008** at 4:30 pm for a **Closed Session** in the Council Conference Room for a Conference with Agency Negotiator pursuant to Government Code Section 54957.6 and **set November 18, 2008** at 5:00 pm for a **Closed Session** for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8 regarding Property: APN 104-43-051, APN 104-43-052, APN 104-43-030, APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and for a Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6 for a Conference with Agency Labor Negotiator, City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers), Unit #4 - City of Santa Clara Professional Engineers, Units #5, 7 & 8 - City of Santa Clara Employees Association, Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees), Unit #9 - Miscellaneous Unclassified Management Employees and Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association).

17.A **MOTION** was made by McLeod, seconded and unanimously carried, that there being no further business, the meeting was adjourned at 8:07 pm in **Memory** of **Todd James Lee** (resident of Santa Clara and lifetime Santa Clara County resident) and **Jane Turnbull** (past President and Vice-president of the California League of Women Voters, Los Altos-Mountain View Chapter) to Thursday, **November 6, 2008** at 4:30 pm for a Closed Session in the Council Conference Room and to Tuesday, **November 18, 2008** at 5:00 pm for a Closed Session in the Council Conference Room and to 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

ATTEST: _____
City Clerk

APPROVE: _____
Mayor